

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

STATE OF TEXAS; STATE OF
LOUISIANA,

Plaintiffs,

v.

The UNITED STATES OF AMERICA;
ALEJANDRO MAYORKAS, Secretary of the
United States Department of Homeland
Security, in his official capacity; UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY; TROY MILLER, Senior Official
Performing the Duties of the Commissioner of
U.S. Customs and Border Protection, in his
official capacity; U.S. CUSTOMS AND
BORDER PROTECTION; TAE JOHNSON,
Acting Director of U.S. Immigration and
Customs Enforcement, in his official capacity;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT; TRACY RENAUD,
Senior Official Performing the Duties of the
Director of the U.S. Citizenship and
Immigration Services, in her official capacity;
U.S. CITIZENSHIP AND IMMIGRATION
SERVICES,

Defendants.

Civ. Action No. 6:21-cv-00016

PLAINTIFFS' RESPONSE TO COURT'S QUESTION ABOUT A HEARING

On July 2, 2021, the Court ordered the parties to “inform the Court as to whether an evidentiary hearing is appropriate.” Plaintiffs believe that the Court could grant a preliminary injunction based on the evidence already before it but that, in light of new evidence, an evidentiary hearing is appropriate.

First, the recent filing of *Coe v. Biden*, No. 3:21-cv-168 (S.D. Tex. July 1, 2021), revealed that several individuals have information highly relevant to this case. The *Coe* plaintiffs have made specific allegations about Defendants’ implementation of the February 18 Memorandum, *see Coe* Compl. ¶¶ 49–63, and the effects on law enforcement, *see id.* ¶¶ 81–89. Counsel for the *Coe* plaintiffs has represented that the following individuals are willing to testify in this case:

- Sheriff Brad Coe of Kinney County, who is a plaintiff in *Coe*;
- The Director of the Federal Police Foundation, which is a plaintiff in *Coe*; and
- Three ICE officers who, as members of the ICE Officers Division of the Federal Police Foundation, intend to submit evidence to the *Coe* court. These officers wish to remain anonymous for fear of official retaliation from Defendants. These officers intend to proceed under pseudonyms (with their true names under seal) in *Coe* and wish to do the same in this case. *See, e.g.,* Unopposed Protective Order, *Freedom from Religion Found., Inc. v. Mack*, No. 4:17-cv-881, ECF 20 (S.D. Tex. May 30, 2017).¹

Second, Plaintiffs believe it would be helpful for Jason Clark, the Chief of Staff for the Texas Department of Criminal Justice, to testify at the evidentiary hearing. Mr. Clark has submitted a declaration addressing data from the first two months of Defendants’ new policies. *See* ECF 41-1. His live testimony would be a convenient method for not only explaining the

¹ If the Court decides to have an evidentiary hearing, counsel for the witnesses would file a motion seeking to protect their identities. Without such protection, the officers are not willing to testify. If the officers cannot testify, Plaintiffs may call Thomas Homan, former Acting Director of ICE, who has over three decades of experience with the agency. Mr. Homan has provided a declaration in this case and would address how ICE works and, based on his prior experience and review of DHS data, the effects Defendants’ new policies have on the ability of field agents to perform routine enforcement of the immigration laws. *See* ECF 19-4.

material in his declaration but also providing additional analogous evidence covering the time since then.

Regarding scheduling, all witnesses are available Thursday, July 29 or, alternatively, Wednesday, July 28. Counsel for Plaintiffs will of course work around the Court's schedule but respectfully request that the Court not schedule the hearing for the week of July 19. Multiple witnesses have represented they are unavailable that week, and counsel is scheduled to appear at a consolidated hearing and trial in Amarillo on July 22. *See Order, Texas v. Biden*, No. 2:21-cv-67, ECF 69 (N.D. Tex. July 6, 2021).

Date: July 9, 2021

Respectfully submitted.

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CERTIFICATE OF COMPLIANCE

I certify that the total number of words in this response, exclusive of the matters designated for omission, is 504, as counted by Microsoft Word.

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on July 9, 2021, which automatically serves all counsel of record who are registered to receive notices in this case.

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN